

## ***What the New Liberal Government Should Know About “Reproductive Freedom and Justice in New Brunswick”***

**Joanne H. Wright**

What the new Liberal government should know is that citizenship rights don't admit half measures. New Brunswick women do not experience a level playing field when it comes to reproductive freedoms and justice. In 1988, the Supreme Court of Canada declared unconstitutional the requirement that women seeking abortions must first obtain the approval of a committee of three physicians. The Court identified the restrictions and delays engendered by the committee process to be an infringement on women's security of the person, guaranteed by Section 7 of the *Charter of Rights and Freedoms*. Long after the Supreme Court struck down the criminal code provisions restricting abortion, women in New Brunswick and PEI continue to face significant and arbitrary barriers in accessing abortion services. Although New Brunswick women and activists have been trying to bring national attention to this issue for some time, and have worked for decades to eliminate barriers to access, it was the announcement of the Fredericton Morgentaler clinic's closure in the summer of 2014 that plunged New Brunswick's unique legal and constitutional situation into the spotlight.

*So, how is New Brunswick different from the rest of Canada?* It is different in that it continues to require women to secure the approval of two doctors to obtain this service (mandated by a provincial regulation, NB 84–20). It also requires the procedure to be done in hospital by an obstetrician/gynecologist. And it refuses to fund abortions performed in clinics by non-specialists, although the *Canada Health Act* stipulates that clinics are to be regarded as hospitals and the procedures done in them to be covered by Medicare. In a bold contradiction, the province's *Medical Services Payment Act* prohibits what the *Canada Health Act* mandates. All other provinces with an abortion clinic comply, but New Brunswick does not. On the World Health Organization's list of barriers to safe abortion are restrictive laws, poor availability, high cost, and the requirement for third-party authorization. New Brunswick can check the box beside each of these items.

Yes, New Brunswick is definitely different; it is exceptional for creating a legal and constitutional abyss with respect to reproductive justice. The government is able to claim to provide access, as currently two hospitals perform the service, but it maintains the restrictions to assuage what is felt by some to be a conservative, religious demographic that opposes the use of taxpayers' money to fund clinic abortions. This really is a “no-woman's land,” however, because the province cannot come close to meeting the demand for abortion services (the Morgentaler clinic provided access for New Brunswick women as well as for women from PEI, a province where no hospital abortions are available). And yet, as pro-choice activists Wendy Robbins and Jula Hughes have each pointed out, the government does deem abortion to be a medically necessary procedure by allowing it to be performed, and paying for it, in hospitals.<sup>1</sup> If the government did not deem it as such, if it actually opposed abortion, it would have to go further than the current “We'll pay for some but not others and we'll just make the whole thing generally difficult.” The Progressive Conservative government of David Alward continued the longstanding practice of being well and truly disingenuous, a practice he promised to uphold while campaigning this fall.

Restricting women's access to abortion services is a medical issue in that it compromises women's mental and physical health to endure wait times to see physicians (who may or may not be pro-

choice), to wait for a hospital appointment, and to pay for travel to another area of the province. Restricting access is also a legal and constitutional issue, as New Brunswick continued to fight Morgentaler in the courts until his death, with at least one previous minister of health vowing to fight Morgentaler all the way to the Supreme Court. Apparently it was lost on Minister Brad Green that other provinces had done the same and lost. Why did he think New Brunswick would get a different outcome?

Restricting access to abortion services is a class issue because it is economically precarious and marginalized, rural, and young women who struggle to pay out of pocket for clinic abortions and who will not be able to afford to travel outside of the province now that the Morgentaler clinic has closed its doors (reducing 60 percent of abortion care). That these restrictions remain, and have been upheld by successive complacent governments, comes from a place of entitlement, for the government members upholding these restrictions will never have to face the tough economic circumstances faced by many a New Brunswick woman who is impoverished and out of options. As current research on the situation of women in PEI indicates, the idea that we may return to the days of back alley abortions, or self-administered ones, is not so far off.<sup>2</sup>

We should also consider what the restriction on abortion services in New Brunswick says about women's citizenship in the province, or their status as rights-bearing individuals. In his CBC Massey lectures, Michael Ignatieff observed that "one of the ironies about rights is that people who win theirs don't necessarily want anyone else to have them."<sup>3</sup> He points out, as others have, that those who have rights have "displayed astonishing ingenuity in denying claims that now seem self-evident."<sup>4</sup> Nothing could describe the situation in New Brunswick better: the politicians, medical professionals, and other citizens who have and enjoy all their freedoms put blinders on and refuse to acknowledge how these restrictions demean and infantilize women, and ultimately deny them vital autonomy. "Does it affect me?" should not be the litmus test for politicians to determine whether a policy needs reform. As they stand, current provincial policies say to women: "Yes, you can get married, you can take a job, own property, and run for office, and you can consent to undertake other medical procedures—*any other medical procedure*—but on this one issue that is of such personal importance to you, the outcome of which will fundamentally determine your life course, we think you need the outside approval of some people who don't know you." No politician since Frank McKenna has had to proclaim, as he did with arrogance, that they would drive Morgentaler from the province. They don't have to say it because the policy that was designed to achieve that goal is firmly in place and still represents the same sentiment.

We should note that Western countries often deride other jurisdictions for retaining laws and practices we find outdated and inegalitarian—laws requiring certain dress, prohibiting women's driving, or education for girls and women—but this policy, too, is the legacy of outdated and inegalitarian views on women. It is of a piece with the old-fashioned view that women can't vote, can't sign legal documents, or aren't rational enough to participate in political life. It is the legacy, not just of McKenna, who first enacted NB 84–20, but of Richard Hatfield, whose government carefully hid behind the medical community to disguise its anti-clinic and anti-abortion stance.<sup>5</sup> And it is the legacy of every complacent New Brunswick government, whether Progressive Conservative or Liberal, since Hatfield and McKenna.

In addition to the medical, legal, constitutional, and citizenship implications of New Brunswick's stance on abortion, there is the matter of how it makes us look to the rest of the country. What does it say about the province that we continue to operate in this exceptional "no-woman's land," refusing to accept decisions of the Supreme Court and the principles of the *Canada Health Act*? How has this

flagrant disregard for Canadian law been allowed to go on for this long? Is there something archaic or pathological at work in New Brunswick politics that prevents the province from adjusting its policies on an issue that has been resolved elsewhere in Canada (with the exception of PEI)?

Inevitably, when these sorts of issues garner national attention, New Brunswick is portrayed as a backwater. There is a kind of easy reductionism that takes place as bad policy comes to stand for an entire province and its people. “Backward” is the other side of the coin to “quaint,” and both are disempowering. Consider Heather Mallick’s portrayal in a *Toronto Star* article of poor little New Brunswick; things are so gloomy, and the people (women) so downtrodden—we should all feel happy we don’t live there. She earned the ire of some when she wrote, “Rural Nova Scotia is like West Virginia. Newfoundland has the kindest people in the country but the poverty is Mississippian. You can only salute Saskatchewan, the root vegetable of the national table, for trying so very hard. And then there’s New Brunswick.”<sup>6</sup>

Then there was the award-winning NFB film, *Status Quo: The Unfinished Business of Feminism in Canada* (2012),<sup>7</sup> that casts Fredericton as a kind of “Frederikgrad,” using stark images of the historic downtown streets and houses, a bleak shot of the city’s walking bridge, and the interviews with silhouetted figures looking out over a grey landscape. Unsettling as this representation of New Brunswick is to watch, filmmaker Karen Cho should be applauded for her revealing interviews with the Morgentaler clinic staff, volunteers, and clients.

The policy needs to change. But New Brunswick is not hopeless.

This is not a problem of our province being fundamentally different from any other—this is a problem of numbers and of critical mass. If there are differences in political culture—is this a deeply conservative region? or a hotbed of religious fundamentalism?—I believe they are subtle. The real problem is a deeply ingrained sense of New Brunswick exceptionalism: the belief that we are just a little province and therefore we can’t expect the same rights and entitlements here. We won’t ask questions or expect transparency; instead, we should just feel grateful for what we have. Neither our deference, nor our government’s paternalism, will help New Brunswick solve any of the challenges it currently faces.

If anything, small is an opportunity to do things well, and to ensure that rights are equally distributed. Yes, choices must be made, and people in New Brunswick understand that. But these choices should never have been at the expense of women’s constitutionally protected rights. At this point, whether women can attain full rights or not will depend upon the new Liberal government’s boldness and its preparedness to fulfill a somewhat vague campaign promise to further study the barriers to abortion access. What an unfortunate state of affairs. No wonder women in the province have undertaken unprecedented levels of activism, from fundraising efforts for the Morgentaler Clinic to the creation of Fredericton Youth Feminists and Reproductive Justice New Brunswick. Women’s tolerance for New Brunswick exceptionalism is over.

**Joanne H. Wright** teaches Political Science at the University of New Brunswick.

## Endnotes

- <sup>1</sup> See Emily Baron Cadloff, “Medical Society Calls for Clarification of NB Abortion Policy,” *Global NB*, 25 July 2015. <http://globalnews.ca/news/1474465/medical-society-calls-for-clarification-of-n-b-abortion-policy/>; and Jula Hughes, “Prof. Jula Hughes (UNB Law): The Closure of the Morgentaler Clinic and the Rule of Law in New Brunswick,” *Institute for Feminist Legal Studies at Osgoode*. <http://ifls.osgoode.yorku.ca/2014/04/nbabortion/>.
- <sup>2</sup> Colleen MacQuarrie, Jo-Ann MacDonald, and Cathrine Chambers, “Trials and Trails of Accessing Abortion in PEI: Reporting on the Impact of PEI’s Abortion Policies on Women,” January, 2014. [http://projects.upei.ca/cmacquarrie/files/2014/01/trials\\_and\\_trails\\_final.pdf](http://projects.upei.ca/cmacquarrie/files/2014/01/trials_and_trails_final.pdf)
- <sup>3</sup> Michael Ignatieff, *The Rights Revolution* (Toronto: House of Anansi P, 2007), 4.
- <sup>4</sup> Ignatieff, 5.
- <sup>5</sup> See Katrina R. Ackerman, “‘Not in the Atlantic Provinces’: The Abortion Debate in New Brunswick, 1980–1987,” *Acadiensis* XLI no. 1 (Winter/Spring 2012): 75–101.
- <sup>6</sup> Heather Mallick, “No Abortion Rights in Canada’s Backwaters: Mallick,” *Toronto Star*, 11 April 2014. [http://www.thestar.com/news/gta/2014/04/11/no\\_abortion\\_rights\\_in\\_canadas\\_backwaters\\_mallick.html](http://www.thestar.com/news/gta/2014/04/11/no_abortion_rights_in_canadas_backwaters_mallick.html).
- <sup>7</sup> [https://www.nfb.ca/film/status\\_quo\\_the\\_unfinished\\_business\\_of\\_feminism/](https://www.nfb.ca/film/status_quo_the_unfinished_business_of_feminism/).